



U.S. Department  
of Transportation

**Federal Railroad  
Administration**

400 Seventh St., S.W.  
Washington, D.C. 20590

JUL 18 2003

Mr. Luc Bourdon  
Director General  
Rail Safety  
Transport Canada  
Place deVille, Tower C  
330 Sparks Street, 10th Floor  
Ottawa, Ontario K1A 0N5

*FRA-2001-11068-26*

OFFICE OF CHIEF COUNSEL

2003 JUL 22 AM 8:46

FEDERAL RAILROAD  
ADMINISTRATION

Dear Mr. Bourdon:

The Government of Canada had requested consultations with respect to the Federal Railroad Administration (FRA) proposed rule (NPRM) regarding applicability of certain requirements concerning control of alcohol and drug use in railroad operations as they would apply to foreign-based employees of foreign railroads entering the United States and performing train or dispatching service (66 Fed. Reg. 6400 (2001)). Transport Canada was designated to conduct those consultations. We have had the opportunity to discuss these issues now on two occasions: first, at our regular Transport Canada/FRA meeting in Fort Lauderdale this March and, more recently, at the Land Transportation Standards Subcommittee meeting in San Antonio on May 28, 2003. At the latter meeting we also discussed the NPRM with representatives of the Mexican Government; the Mexican representatives indicated that Mexico would be issuing regulations in the near future that would be compatible with FRA's rules.

Transport Canada has called FRA's attention to the relatively new Canadian medical and safety management system programs, which address at least in part some of the same concerns targeted by our alcohol/drug regulations. We have discussed the need to better understand the way in which those programs are being implemented and to gauge their effectiveness, and we have also expressed our interest in learning from your experience under those rules. FRA has also noted with appreciation Transport Canada's allowance of limited exceptions from the Canadian medical standards requirements for U.S. railroads with limited operations in Canada.

Based upon the considerations discussed between our staffs, as well as other comments to the docket, FRA intends to issue a final rule that would revise the proposed rule in a number of respects. While applicable rulemaking law and procedures preclude us from specifying in advance the revisions we are contemplating, we believe that the final rule will reasonably address the concerns which Canadian representatives expressed to us during the consultation process.

The issues that we would address include the following:

- The creation and scope of an exclusion for foreign-based employees of foreign railroads who enter U.S. territory to perform train or dispatching service.
- The circumstances and procedures under which requirements of the rule could be waived.
- The authority of foreign railroads to conduct testing partially or exclusively on U.S. soil and the scope of sanctions applied to employees who violate FRA rules.

- The exemption of current employees from pre-employment testing requirements.
- The circumstances under which FRA could recognize a foreign government's drug and alcohol program as equivalent to FRA's.


FRA will publish a Federal Register notice announcing the proposed changes to the NPRM and providing the public with a very brief period to comment. You will be provided with a copy of this notice. FRA will, of course, carefully consider any comments that are filed when issuing the final rule.

I appreciate that the means FRA chooses to address these issues may not necessarily represent the first preference of the Canadian Government or Canadian railroads. However, I believe that it will be responsive to the concerns raised by your government and will be the best compromise that we can fashion to accommodate those concerns while continuing to be responsible for control of alcohol and drug use in railroad operations within our borders.

A similar letter is being sent to the Mexican Government representatives.

Thank you very much for the constructive work of Transport Canada on this and other matters of mutual interest.

Sincerely,



George A. Gavalla  
Associate Administrator for Safety

cc: Dr. José Valente Aguilar  
Director General  
de la Dirección General de Protección y Medicina Preventiva en el Transporte  
de la Secretaría de Comunicaciones y Transportes

Ing. Antonio Lozada Bautista  
COORDINADOR ADJUNTO  
Director de Regulación Técnico Operativa de Transporte Ferroviario  
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